

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 CHRISTOPHER D. DAVIS,
3 Appellant,
4 v.
5 CAROLINE DAVIS,
6 Respondent.

Case No.: 68542
Eighth Judicial District
Court
Case No.: P-15-083867-T
re the Beatrice B. Davis Family
Heritage Trust, dated July
28, 2000)

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8 **RESPONDENT’S RESPONSE TO CHRISTOPHER D. DAVIS’**
9 **EMERGENCY MOTION UNDER NRAP 27(e) FOR 1) STAY PENDING**
10 **APPEAL AND 2) AFFIRMATIVE RELIEF**

11 Pursuant to NRAP 27(a)(3), Caroline D. Davis (“Ms. Davis”) hereby
12 submits her Response to Christopher D. Davis’ Emergency Motion Under NRAP
13 27(e) For 1) Stay Pending Appeal And 2) Affirmative Relief (the “Response”).
14 This Response is made and based on the pleadings and papers on file in the
15 Eighth Judicial District Court Case Number P-15-083867-T.

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17 A. Introduction.

18 Christopher D. Davis’ (“Christopher”) request to stay discovery in
19 connection with the emergency writ is meritless. The sole ground for his request
20 is the alleged lack of jurisdiction of the Eighth Judicial District Court,
21 Department 26 (the “District Court”), pursuant his misplaced contention that the
22 First Amendment, dated February 24, 2014 (the “First Amendment”)¹, to the
23 Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, (the “Trust”), is

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28 ¹ See, First Amendment attached hereto and incorporated as Exhibit A.

1 invalid and, therefore, failed to change its governing jurisdiction from Alaska to
2 Nevada. The First Amendment effectively appointed Dunham Trust Company of
3 Nevada as Directed Trustee,² Christopher as Investment Trust Advisor,³ and
4 transferred situs of the Trust to Nevada.⁴ Christopher expressly acknowledged
5 and consented to the First Amendment, accepted to serve as Investment Trust
6 Advisor, acted in his capacity as Investment Trust Advisor, and submitted to the
7 jurisdiction of the State of Nevada pursuant to NRS 163.5555.⁵ It was not until
8 Ms. Davis, the primary beneficiary of 50% of the Trust, sought information and
9 documentation concerning the Trust, the assets, and Christopher's management
10 thereof, that Christopher raised issues regarding the validity of the First
11 Amendment.
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16 Indeed, in an effort to circumvent the District Court, Christopher
17 intentionally misrepresented events and untimely raised new, unsupported "facts"
18 and arguments in a reply brief related to: (1) the alleged lack of consent of all
19 beneficiaries to the First Amendment and transfer of situs; (2) the alleged lack of
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23 ² *Id.*, at, page 2, Section 1.01, SECOND; and page 2, Article Thirteen, Section
24 2.d, FIRST.

25 ³ *Id.*, at pages 2-3, Article Thirteen, Section 2.d., SECOND.

26 ⁴ *Id.*, at page 1, Article One, Section 2.

27 ⁵ NRS 163.5555, in relevant part, provides that "[i]f a person accepts an
28 appointment to serve as a trust protector or a trust adviser of a trust subject to the
laws of this State, the person submits to the jurisdiction of the courts of this State,
regardless of any term to the contrary in an agreement or instrument."

1 a Trustee to consent to the transfer of situs; and (3) the alleged failure of the
2 Trustee to obtain advice of counsel.⁶

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4 On April 22, 2015, oral arguments were heard on the Original Petition⁷ and
5 the Motion To Dismiss.⁸ The District Court, being unaware of Christopher's
6 Reply,⁹ assumed some credence to Christopher's newly raised factual contentions
7 and arguments, but nevertheless found jurisdiction over the Trust at a minimum
8 under the theory of "constructive trust", more accurately described as a "de facto
9 trust".¹⁰ The District Court expressly stated the assumption of jurisdiction was
10 necessitated because: (1) the parties involved have been relying on the First
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15 ⁶ See, Christopher's Reply To Ms. Davis' Opposition To The Motion To
16 Dismiss attached hereto and incorporated herein as Exhibit B, which was filed
17 only two (2) days prior to the hearing on the Original Petition and the Motion
18 To Dismiss.

19 ⁷ See, Original Petition, which is attached hereto and incorporated herein as
20 Exhibit C.

21 ⁸ See, Motion To Dismiss attached hereto and incorporated herein as Exhibit D.

22 ⁹ See, April 22, 2015 Transcript, page 24, line 9, attached hereto and
23 incorporated herein as Exhibit E.

24 ¹⁰ *Id.*, at page 46, line 11-14; page 49, lines 19-21; page 50, lines 18-21; and
25 page 52, lines 9-10. See also, In re Irrevocable Trust of McKean, 144
26 Wash.App. 333, 341, 183 P.3d 317, 321-322 (Wash. Ct. App. 2008) (explaining
27 that a person or entity becomes a de facto trustee when such person or entity
28 "(1) assumed the office of trustee under a color of right or title and (2) exercised
the duties of the office.") (Citations omitted); Allen Trust Co. V. Cowlitz Bank,
210 Or.App. 648, 657, 152 P.3d 974, 978-979 (Or. Ct. App. 2007), *clarified by*
212 Or.App. 572, 159 P.3d 319 (Or. Ct. App. 2007); In re Bankers Trust, 403
F.2d 16, 20 (7th. Cir. 1968); and Creel v. Martin, 454 So.2d 1350 (Ala. 1984).
Here, the Trust is accurately described as a "de facto trust" as it was transferred
to Nevada under color of title and Dunham and Christopher assumed and
exercised the duties of their respective offices.

1 Amendment in good faith and there was no longer any connection to Alaska or
2 the former trustees; (2) that Dunham had been duly administering the Trust in
3 Nevada in good faith for over one year; and (3) that Christopher had been acting
4 in Nevada pursuant to the First Amendment in his role as Investment Trust
5 Advisor, managing the Trust assets as such and as the Manager of a Nevada
6 limited liability company wholly owned by the Trust.¹¹
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9 Counsel for Ms. Davis and Christopher were unable to agree upon the
10 terms of the order from the April 22, 2015 hearing, and, as a result, on May 11,
11 2015, Ms. Davis' counsel sent a proposed order to the Honorable Judge Gloria J.
12 Sturman ("Judge Sturman").¹²
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17 ¹¹ See, Exhibit E, at page 46, lines 12-14; page 47, lines 9-10; page 48, lines
18 12-13; page 50, lines 16-18; and page 51, lines 20-25.

19 ¹² See, May 11, 2015 Letter from Mark A. Solomon to Judge Sturman,
20 including enclosures, attached hereto and incorporated herein as Exhibit F.

21 Although counsel's administrative staff inadvertently failed to dispatch a
22 carbon copy of the letter to Christopher's counsel, at the time of submission,
23 Christopher's counsel nonetheless received a copy on the morning of May 12,
24 2015. See, May 12, 2015 Email To All Counsel attached hereto and
25 incorporated herein as Exhibit G. Ms. Davis' counsel also immediately notified
26 Judge Sturman of the same, and provided a carbon copy of such notification to
27 all counsel. See, May 12, 2015 Letter from Mark A. Solomon to Judge Sturman
28 and accompanying email to All Counsel attached hereto and incorporated
herein as Exhibit H. Indeed, Christopher's counsel responded to the May 11,
2015 Letter to Judge Sturman, sending a letter Judge Sturman on May 12, 2015,
enclosing a competing order. See, May 12, 2015 Letter from Anthony L.
Barney to Judge Sturman, including enclosures, attached hereto and
incorporated herein as Exhibit I.

1 On July 1, 2015, an Order was entered that, *inter alia*, assumed
2 jurisdiction over Christopher, as Investment Trust Advisor, without prejudice and
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4 ordered Christopher to immediately produce documents in his possession,
5 custody, or control as Investment Trust Advisor and as Manager of FHT
6 Holdings, LLC, the Nevada limited liability company wholly owned by the
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8 Trust.¹³

9 Although Christopher filed an Appeal,¹⁴ pursuant to NRS 155.195,
10 discovery has not been stayed. As such, Ms. Davis' counsel has been conducting
11 discovery to identify the information and documentation she is entitled to under
12 the law and pursuant to Article 4, Section 12 of the Trust.¹⁵ Christopher has
13 consistently failed to abide by the July 1, 2015 Order, arguing that the District
14 Court lacks jurisdiction over the Trust and *in personam* jurisdiction over him as
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16 Investment Trust Advisor and Manager of FHT Holdings, LLC.¹⁶

21 ¹³ See, Notice Of Entry Of Order, dated July 1, 2015, and Order, dated June 24,
22 2015, collectively attached hereto and incorporated herein as Exhibit J.

23 ¹⁴ See, Notice Of Appeal and Case Appeal Statement, dated July 30, 2015,
24 respectively attached hereto and incorporated herein as Exhibit K and Exhibit
25 L.

26 ¹⁵ See, Subpoenas Duces Tecum to Christopher's counsel, Harriet H. Roland,
27 Esq. and Anthony L. Barney, Esq.; Motion To Compel; Motion To Hold
28 Christopher In Contempt; and Notice of Deposition respectively attached and
incorporated herein as Exhibit M, Exhibit N, Exhibit O and Exhibit P.

¹⁶ See, Motion For Protective Order; Opposition To Motion To Compel;
Notice Of Non-Appearance for a properly noticed deposition, respectively
attached hereto as Exhibit Q, Exhibit R, and Exhibit S.

1 B. Each Allegation Christopher Has Made Regarding The Invalidity Of
2 The First Amendment Has Been Proven To Be Patently False, And,
3 Therefore, His Motion For Stay Should Be Denied.

4 Christopher has argued that the First Amendment is invalid because his
5 wife, Tarja Davis (“Tarja”), did not consent to the same. Ms. Davis, however,
6 presented evidence to the District Court’s satisfaction that: (1) Tarja did not
7 qualify as a “spouse” under the terms of the Trust; (2) Tarja is not a beneficiary
8 of the Trust; (3) Tarja’s consent was not necessary to transfer the situs; and (4)
9 Tarja was not even seeking to challenge the First Amendment or transfer of
10 situs.¹⁷ Ms. Davis also provided additional evidence that all of the Trust’s
11 beneficiaries acknowledged and consented to the First Amendment and transfer
12 of the Trust’s situs, notwithstanding Christopher’s misrepresentations to the
13 contrary.¹⁸

14 Christopher has also misrepresented that Alaska USA Trust Company
15 (“Alaska USA”), the then-serving trustee, resigned prior to giving its consent to
16 the transfer of the Trust’s situs. The recitals in the Release unequivocally
17 demonstrate that Alaska USA was the current Trustee on February 24, 2014, the
18 date the Frist Amendment was executed and the Trust’s situs was transferred to
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25 ¹⁷ See, September 2, 2015 Transcript, at page 58, lines 22-25; page 59, lines 1-
26 2; page 61, lines 1-7; page 45, lines 1-4, attached hereto and incorporated as
27 Exhibit T.

28 ¹⁸ See, Exhibit U, at pages 8-10; see also Resignation, Release, Acknowledgment, Consent And Indemnification Agreement, dated February 24, 2014 (the “Release”), attached hereto and incorporated herein as Exhibit U.

1 Nevada.¹⁹ Indeed, Section 1 of the Release provides that Alaska USA expressly
2 consented to the transfer of the Trust's situs to Nevada.²⁰

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4 Similarly, Christopher's contention that Alaska USA failed to receive
5 advice of counsel is also refuted by the evidence. Ms. Davis presented evidence
6 to the District Court that Alaska USA obtained the advice of Dennis Brislawn,
7 Esq. in order to effectuate the transfer of the Trust's situs.²¹

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9 Based upon the foregoing evidence refuting Christopher's allegations,
10 Judge Sturman found that she is "more convinced than ever that [Nevada] is
11 where jurisdiction is because [she] believe[s] that the trust was properly changed
12 to a Nevada trust with full notice to the people who were entitled to get it..."²²

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14 Judge Sturman further informed the parties that her assumption of
15 jurisdiction over the Trust, using the description of "constructive trust" was
16 technically inaccurate, but that the basis for assuming de facto jurisdiction was
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22 ¹⁹ See, Motion To Amend Or Modify Order, at page 13, lines 9-16; see also
23 Exhibit U, at page 1, "Recitals" and page 2, Section 1.

24 ²⁰ See, Exhibit U, at page 2, Section 1.

25 ²¹ See, Motion To Amend Or Modify Order, at page 15, lines 3-20, and page
26 16, lines 1-9, and Exhibit 4 thereto, attached hereto and incorporated herein as
27 Exhibit V; see also, Objection To Petition For Reconsideration, at page 11, lines
28 18-21, page 12, lines 1-3, and Exhibit 6 thereto attached hereto and
incorporated herein as Exhibit W; Supplement to Objection To Petition For
Reconsideration, at Exhibit 12 thereto, attached hereto and incorporated herein
as Exhibit X; and Exhibit 20, at page 42, lines 12-15.

²² See, Exhibit T, at page 60, lines 5-9.

1 proper.²³ Furthermore, Judge Sturman held that she would certify her intent to
2 assume jurisdiction over the Trust de jure if the case were remanded back to the
3 District Court.²⁴ Indeed, Judge Sturman has, in fact, certified her intent that “if
4 this case is remanded...the District Court would...assume jurisdiction over the
5 [Trust]...as a proceeding in rem pursuant to NRS 164.0101...”²⁵
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8 The District Court has sufficient and satisfactory evidence that assumption
9 of jurisdiction over the Trust in its entirety is proper, and the July 1, 2015 Order
10 that is currently on appeal is still valid and enforceable. As such, staying the
11 proceedings will do nothing more than permit Christopher to continue to
12 stonewall Ms. Davis’ attempts to obtain information to which she is entitled and
13 which Christopher is obligated to disclose as a fiduciary of the Trust. Therefore,
14 Christopher’s Motion To Stay should be denied in its entirety.
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17 C. The Proper Parties Have Been Provided The Requisite Notice.

18 Ms. Davis provided each of the interested persons and necessary and
19 indispensable parties notice of the Original Petition as required by NRS 155.010.
20 NRS 164.010(2) provides that “[i]f the court grants the petition, it may consider
21 at the same time any petition for instructions filed with the petition for
22 confirmation.” The July 1, 2015 Order expressly provides that the District Court
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26 ²³ *Id.*, at page 59, lines 23-25; and page 60, lines 1-3.

27 ²⁴ *Id.*, at page 68, lines 4-5; page 70, lines 20-25.

28 ²⁵ See, Certification Of Intent To Amend Order, attached hereto and incorporated
herein as Exhibit Y.

1 assumed jurisdiction over the Christopher as Investment Trust Advisor and
2 required his production of documents as requested by Ms. Davis in her Original
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4 Petition.²⁶

5 NRS 163.5555, in relevant part, provides that “[i]f a person accepts an
6 appointment to serve as a trust protector or a trust advisor of a trust subject to the
7 laws of this State, the person submits to the jurisdiction of the courts of this
8 State.” As Christopher has accepted tenure as Investment Trust Advisor,
9 expressly submitted to the laws of the State of Nevada per NRS 163.5555, and
10 received proper notice of the Original Petition, the District Court may properly
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12 assert *in personam* jurisdiction over him.
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14 Additionally, Christopher is also serving as the sole Manager of FHT
15 Holdings, LLC, which is a Nevada limited liability company wholly owned by
16 the Trust. In connection with the formation of FHT Holdings, LLC, the Trust’s
17 primary asset, the Ashley Cooper Life Insurance Policy, was transferred from the
18 Trust to FHT Holdings, LLC, and, therefore, Christopher, as the Investment Trust
19 Advisor and sole Manager of FHT Holdings, LLC, is the sole individual in
20 control of such asset and information relating thereto.²⁷ As Christopher is serving
21 in such dual capacity, the District Court properly ordered Christopher, as
22 Investment Trust Advisor, to disclose information as it relates to the Trust that he
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27 ²⁶ See, Exhibit J, at Order, at page 2, lines 18-20; and page 3, lines 3-7.

28 ²⁷ See, Exhibit W, at page 18, lines 14-18; and page 19, lines 1-3.


1 may have obtained in his role as sole Manager of FHT Holdings, LLC.²⁸ To
2 permit Christopher to hide behind the title of Manager of FHT Holdings, LLC or
3 as a beneficiary of the Trust would result in a substantial injustice to Ms. Davis
4 and essentially alleviate Christopher of any fiduciary duties that accompany his
5 role as Investment Trust Advisor. As such, Christopher's request for dismissal
6 should be denied.
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9 **CONCLUSION**

10 For the foregoing reasons, Ms. Davis respectfully requests that this Court
11 deny Christopher's Emergency Motion Pursuant to NRAP 27(e) and NRAP 8.
12

13 DATED this 16th day of October, 2015.

14 SOLOMON DWIGGINS & FREER, LTD.

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29 ²⁸ See Exhibit J; see also, In the Matter of Schnur Estate, 39 Misc.2d 880, 887,
30 242 N.Y.S.2d 126, 132 (1963) (stating "where an estate or trust owns all or
31 substantially all of the shares of a corporation, the corporate form may be
32 disregarded and the situation viewed just as if the fiduciaries held title to the
33 corporate assets...It is not so much a matter of disregarding the corporate form,
34 but rather giving paramount consideration to the testamentary plan and scheme,
35 and effectuating it in the manner prescribed by the testator.")